Krishnamoorthy a/l Appannan v Lembaga Tatatertib Perkhidmatan Awam, Pentadbiran Keretapi Tanah Melayu, Sentul, Kuala Lumpur

HIGH COURT (KUALA LUMPUR) — SUIT NO S1-21-240 OF 1991
MOHD SAARI J
8 JANUARY 1999

Administrative Law *— Rules of natural justice — Breach of — Failure to supply report of investigation to plaintiff — Whether there was a duty to supply the report — Whether sufficient opportunity granted to plaintiff to explain and controvert report*

The plaintiff, who was employed by the third defendant, was suspected to have been involved in a theft of railway property. The committee investigating the theft submitted a report to the Disciplinary Board ('the first defendant') which subsequently dismissed the plaintiff. The plaintiff, however, was not supplied with the report at any time. The plaintiff applied, inter alia, for a declaration that the dismissal was null and void. The issue that arose for consideration was whether the first defendant had complied with the rules of natural justice.

Held, granting order in terms:

The plaintiff's dismissal was null and void as he was not afforded the opportunity to explain and controvert what had been taken into account by the first defendant in arriving at the finding of guilt (see p 566A); *Shamsiah bte Ahmad Shah v Public Services Commission, Malaysia & Anor* [1990] 3 MLJ 364 and *Re Godden* [1971] 3 All ER 20 followed.

[Bahasa Malaysia summary

Plaintif, yang telah digaji oleh defendan ketiga, disyaki terlibat dalam pencurian harta perkhidmatan kereta api. Jawatankuasa yang menyiasat telah menyerahkan laporan kepada Lembaga Tatatertib ('defendan pertama') yang kemudiannya memecat plaintif. Namun demikian, plaintif tidak diberikan laporan tersebut pada bila-bila masa. Plaintif memohon, antara lain, untuk satu perisytiharan bahawa pemecatan tersebut adalah batal dan tak sah. Isu yang timbul untuk pertimbangan adalah sama ada defendan pertama telah mematuhi rukun-rukun keadilan asasi.

Diputuskan, memberikan perintah seperti dikehendaki:

Pemecatan plaintif adalah batal dan tak sah kerana ia tidak diberikan peluang untuk menjelas dan menyangkal apa yang telah diambil kira oleh defendan pertama dalam mencapai keputusan mengenai kesalahan (lihat ms 566A); *Shamsiah bte Ahmad Shah v Public Services Commission, Malaysia & Anor* [1990] 3 MLJ 364 dan *Re Godden* [1971] 3 All ER 20 diikut.]

Notes

For cases on breach of rules of natural justice, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 569–576.

Cases referred to

Godden, Re [1971] 3 All ER 20 (folld)

Inspector General of Police & Anor v Alan Noor bin Kamat [1988] 1 MLJ 260 (refd)

Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor [1990] 3 MLJ 364 (folld)

Legislation referred to

Public Officers (Conduct and Discipline) (Cap D) General Order, 1980 O 4(2)(f), O 4(2)(g), O 26

Police Pensions Regulations 1971 reg 70(2) [Eng]

Karpal Singh (*Karpal Singh & Co*) for the plaintiff.
Renuka Ahnantakrishnan (*Ananda & Co*) for the defendant.

Mohd Saari J: In a writ, the plaintiff applies for the following:

(a) a declaration the purported dismissal of the plaintiff as a Tukang K2 Tingkatan Kanan attached with the Malayan Railway Administration, Kuala Lumpur is null and void and of no effect and that the plaintiff is still a Tukang K2 Tingkatan Kanan entitled to all the salaries and benefits due to him;

(b) an inquiry to determine the salaries, emoluments and other benefits due to the plaintiff;

(c) damages;

(d) interest on the adjudged sum from date of judgment to date of realization

(e) costs; and

(f) any further or other relief deemed fit and proper by the honourable court.

The uncontroverted facts are that on 18 October 1988 at 3.30am, there was a theft of railway property, namely intermediate member 40 tonnes at the workshop in Sentul near the Railway station. A suspect named R Chandravathanam was arrested at the scene of incident. The other suspect was the plaintiff. He was arrested by the police at his house on the same day at 9.30am.

From the records, it seems that a committee was set up to investigate into the alleged offence of theft. The upshot of the investigation was that a report with recommendation (hereinafter referred to as 'the said report') was submitted to the Disciplinary Board ('the first defendant').

A At all material times, the plaintiff was employed as a Tukang K2 by the third defendant. By letter dated 29 March 1990, the plaintiff was informed that the first defendant had decided to take disciplinary action against the plaintiff under O 4(2)(f) and O 4(2)(g) Public Officers (Conduct and Discipline) (Cap D) General Order 1980 with a view to dismissal or demotion in rank pursuant to O 26 of the same General Order.

B Subsequently, the plaintiff was informed that the first defendant, after taking into account the plaintiff's representation and other related information, had decided that the plaintiff be dismissed with effect from 10 November 1990. The plaintiff appealed to the first defendant but it was dismissed.

C The issue for determination is whether there is compliance with the rules of natural justice by the first defendant.

At the trial, En Karpal Singh, learned counsel for the plaintiff, did not adduce oral evidence but relied on agreed facts and agreed documents. The defence called SD1, secretary of the first defendant, to give evidence, who D deposed that he attended the meeting convened by the Disciplinary Board on 7 November 1990. At the meeting, the Disciplinary Board deliberated on the said report together with the plaintiff's representations as per letter (p 23 of B).

Under cross-examination, SD1 admitted that the plaintiff was not E supplied with the said report at any time.

In *Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor* [1990] 3 MLJ 364, the facts are that appellant, a book-binder with the Government Printing Department, was dismissed by PSC after she was found guilty of negligence and dereliction of duty. PSC, in arriving at its F decision to dismiss appellant from service, had taken into account extraneous matters, namely the appellant's records of past conducts. In this case, the appellant was not given an opportunity to explain, contradict or rebut her record of service. Held, her dismissal was null and void.

In *Re Godden* [1971] 3 All ER 20, Mr Godden, who was then the Kent Police Officer, had made accusations against his superior officers. The Kent G Police Authority proceeded (under reg 70(2) of the Police Pensions Regulations 1971) to refer for decision to a qualified medical practitioner on the ground that the inspector was suffering from a mental disorder of the paranoid type and thereby permanently disabled. It was held, inter alia, that the decision of the selected medical practitioner on the question referred to him under reg 70(2) was a decision of a judicial character and must conform H to the rules of natural justice. Further, it was held, Mr Godden's own medical advisers were entitled to see the same material (eg the P report) as was placed before the practitioner appointed to decide the matter under reg 70(2) and any doctor whom he consulted.

The principles enunciated in the above two cases clearly demonstrate I that the plaintiff ought to be supplied with the said report and be given the opportunity to explain or controvert what had been taken into account by the first defendant in arriving at the finding of guilty against the plaintiff.

That being the case, in my judgment, the omission to afford the opportunity for the plaintiff to explain and controvert the said report renders the dismissal of the plaintiff null and void.

On another aspect, since the proposed punishment had been included in the show cause letter, there is no necessity for the defendant to give the opportunity for the plaintiff to mitigate before punishment (*Inspector General of Police & Anor v Alan Noor bin Kamat* [1988] 1 MLJ 260).

In the premise and for above reasons, I enter judgment for plaintiff and order in terms as prayed.

Application allowed.

Reported by Chin En Tek